

New Hampshire Department of Transportation
State DBE Program Goals Pursuant to 49 CFR 26.45
Goals for FY 2012-2014

OVERALL GOAL (§ 26.45)

Pursuant to the USDOT amendment effective March 5, 2010, the New Hampshire Department of Transportation (NHDOT) will submit the FHWA DBE goal and methodology used to establish the stated goal at three-year intervals. The first three-year submission will be submitted to FHWA by August 1, 2011, and at three-year intervals thereafter. The Department may make a mid-cycle adjustment to its DBE goal if circumstances that have a significant impact on the current stated goal are experienced. Any mid-cycle adjustment will not take effect until approved by the FHWA.

GOAL

NH DOT intends to expend 7.74 % of the amounts received under Titles I, III and V of the Transportation Equity Act for the 21st Century or any subsequently enacted Federal laws, with small business concerns owned and controlled by socially and economically disadvantaged individuals (DBEs). It is the intent of NHDOT that this expenditure is obtained to the extent practicable, through a race and gender-neutral program (see 49 CFR § 26.5 for definitions.)

METHOD OF ATTAINMENT

NH DOT will calculate the overall goal using the criteria based in 49 CFR § 26.45. The determination will be based on a level of DBE participation relative to all businesses ready, willing and able to participate on Federally assisted contracts, and reflect a level of participation expected in the absence of discrimination. The overall goal setting procedure is based on the following:

STEP 1: BASE FIGURE

Method Selected: The NHDOT uses an *Alternative Method*.

Description of Data Used: The data used in this calculation was obtained from two sources. The primary source is the NHDOT bidders list. This includes all bidders, successful and unsuccessful, prime and subcontractors, DBEs and non-DBEs that were seeking work on state and municipal FHWA-assisted transportation related construction contracts in the local market area during the period of January 1, 2010 through December 31, 2010. The secondary data source includes all ready, willing and able firms, DBE and non-DBE, accepted by the NHDOT Consultant Selection Committee and eligible to participate in environmental, engineering and other FHWA-assisted consulting agreements in the local market area during the same period of January 1, 2010 through December 31, 2010. The data collected resulted in a list of prime and subcontractors, DBE and non-DBE that directly participated in, attempted to participate in, or are ready,

willing and able to participate in FHWA-assisted highway construction projects and environmental, engineering and other FHWA-assisted consulting contracts.

The NHDOT frequently reviews prime and subcontractor information submitted during the bidding and NHDOT subcontractor approval process on FHWA-assisted projects, in an effort to identify minority and women owned non-DBE firms for recruitment and possible DBE certification. No potential DBEs have been identified for inclusion in this report during the data collection period.

Collection of the Data To determine the relative availability of construction contractors, information was collected from the bidders list. The NHDOT, Office of Federal Compliance (OFC), maintains a bidders list in accordance with 49 CFR Part 26.11, which includes all DBE and non-DBE prime contractors that have submitted a bid or quote on any state or municipal FHWA-assisted transportation related construction project. The OFC sends a notice to each contractor, identifying each project for which they submitted a bid or quote and requires the contractor to provide the names of any subcontractors or material suppliers, (DBE and non-DBE), that may have submitted a bid or quote in support of their own proposal. The response rate for this inquiry is 88% and therefore considered reliable. The information is compiled using a spreadsheet to ensure that double counting is eliminated. This information is used for the purpose of establishing the portion of the base figure derived from FHWA-assisted construction contracts. The formula is detailed below.

Primes contractors that have submitted bids or quotes during 2010	70
Subcontractors that have submitted bids or quotes during 2010	395
Total of Primes and Subs that have submitted bids or quotes	465
DBE's that have submitted bids or quotes during 2010	36

DBE contractors (36)/All available construction contractors (465) $36/465 = 7.74\%$

The majority of consultant agreements do not employ a standard low bid procedure. In an effort to ensure a complete accounting of possible DBE participation in the consulting process, the NHDOT will compare the total eligible DBE consultants against the total of all eligible consultants to arrive at a potential DBE participation figure absent of any discrimination.

DBE consultants (13)/All available consultants (165) $13/165 = 7.87\%$

Based on past participation of the construction and consultant contract awards of 97.5% construction contracts and 2.5% consultant contracts, the following calculations were performed to determine an appropriately weighted baseline goal:

Construction contracts:	$7.74\% * .975 = 7.54\%$
Consultant contracts:	$7.87\% * .025 = .2\%$
	7.74%

OTHER CONSIDERATIONS WHEN CALCULATING THE BASE FIGURE:

- A. Past participation: The use of past participation as a tool to establish the base figure is not appropriate because it may not be a reflection of the ready, willing and able DBE population that exists today.
- B. Use of the most refined data available: The NHDOT relies on the contractor data directly associated to Federal-aid transportation related projects. Any ready, willing and able DBE capable of transportation work and identified using specific NAICS codes or census data would also be included in the data captured using the bidders list and subcontractor approval process listed above. Any firm (DBE or non-DBE) not identified as submitting a bid or being approved for work on a Federal-aid project would be considered by their exclusion, as being not ready, willing and able and therefore, should not be included in the calculations for the DBE goal.
- C. Use of the DBE Directory: The NHDOT does not use the DBE Directory and census data for DBE goal setting purposes. The Department is very proactive in its efforts to identify prospective transportation related DBE firms, however, will only include a DBE firm in its calculations after it has demonstrated, by bid submission or approval as a subcontractor on a Federal-aid project, that the firm is a ready, willing and able DBE.
- D. Local market area: Due to the small geographic size of New Hampshire the fact that contracting dollars are distributed throughout New Hampshire, and the demonstrated ability of prime and subcontractors to travel throughout state boundaries to perform transportation related work, the entire state is regarded as one local market area. Although 50 construction contracts (76%) have been awarded to NH based firms, the fact that 16 construction contracts (24%) have been awarded to firms in the neighboring states of Maine and Massachusetts confirms that the NH FHWA-assisted contracting market extends beyond the borders of the state, and contractors routinely cross state boundaries to bid on and perform transportation related work in New Hampshire. These contractors have been included in the calculation of the base figure if they have been identified as submitting a bid or quote.
- E. Ensuring DBE goal percentage reflects “apples to apples” calculations: The DBE goal calculation was derived using the same transportation related items of work in both the numerator and denominator, included all DBE and non-DBE prime contractors and subcontractors that submitted a bid or quote or were approved as a subcontractor or material supplier and, regardless of whether or not they were actually awarded the contract or subcontract.
- F. The use of weighting: The NHDOT considered the disaggregation of data by work category and availability on spending in those categories and determined not to apply

weighting to adjust its Step One goal figure. The following information assisted in making this determination.

- a. In FY 2010, the State of NH awarded approximately \$139,000,000 in transportation related contracts. Five (5) contracts valued at \$42 million dollars (30%) were awarded to four (4) prime contractors that specialize in bridge construction. Fourteen (14) contracts valued at \$55 million dollars (39%) were awarded to four (4) prime contractors whose primary operations include paving work. Although 69% of the transportation contracts are considered primarily bridge or paving projects, the scope of services for each contract include many different categories of transportation related work, therefore, bridge and paving contracts are considered too broad to be effective and applicable for weighting. The best opportunities for weighting are at the subcontractor level.
 - b. Thirty-five (35) DBE subcontractors perform transportation related work in fifteen (15) primary work categories. These include paving, traffic control, stone work, painting, construction, environmental, seal coating, steel work, drilling and blasting, engineering, striping, membranes, material supplier, landscaping and guardrail work. The amount of contracted work performed by DBEs is evenly distributed among most types of work as detailed above, therefore, limiting the effective use of weighting for goal setting purposes
- G. Effects of decertification: The NHDOT has not identified any firm (DBE or non-DBE) that has gone out of business or is no longer bidding on Federal-aid contracts, therefore, no additional adjustments to the information used to formulate the Step One DBE goal based on decertification or firms no longer in business are warranted.
- H. Changes in the amount of Federal-aid: No adjustments to the DBE goal will be made based on changes in the amount of Federal-aid received.

STEP 2: ADJUSTMENT TO BASE FIGURE

Step Two of the goal setting calculation process is used to determine if any adjustments are necessary to further refine the Step One base figure. The following factors were taken into consideration when contemplating making any Step Two adjustments.

- A. Past participation: The NHDOT DBE program has consistently been in compliance with the standards set forth in 49 CFR 26, past participation does not reflect an unfairly high or low picture of DBE capacity, therefore, using past participation to adjust the base figure would be appropriate if such an adjustment would result in a more precise DBE goal.

Past projects used in this calculation are transportation related Federal-aid projects with similar work opportunities and characteristics of projects to be advertised and awarded in the foreseeable future, therefore, are suitable for use in this calculation.

The following NHDOT DBE participation figures represent actual payments on contracts completed during each annual reporting period, as reported in the Uniform Report of DBE Commitments/Awards and Payments submitted to FHWA. (Please see attachment). This information was used to determine the median participation rate for the past five (5) year period:

Past Participation of DBEs:	2010	4.57 %
	2006	6.38 %
	2007	6.99 % (median)
	2009	7.94 %
	2008	9.33 %

The NHDOT is not making an adjustment based on past participation because the difference between the median figure and current base rate is negligible.

OTHER CONSIDERATIONS FOR STEP 2 GOAL ADJUSTMENTS

1. Additional sources of information: Additional Step Two adjustments may be considered to counter any past effects of discrimination. However, the NHDOT has maintained a race and gender-neutral DBE program and has not evidenced any reports of discrimination in the award of subcontracts, availability of insurance, bonding or any other business related complaints resulting from discriminatory practices. The Department has ongoing dialog with DBEs, state and local agencies with ties to minority and women's groups, and has not discovered any examples of discrimination that may warrant a Step Two adjustment to rectify a particular problem.
2. Evidence from a disparity study: The NHDOT has not commissioned or conducted a disparity study. The Department contacted a variety of state and municipal agencies, including Administrative Services, Health and Human Services, and consulted with local minority groups, Regional Planning Commissions to determine if any relevant disparity studies have been conducted in the local market area in the past few years, with no positive results. No relevant disparity studies or similar analyses have been found that may provide information relative to discrimination in the local market area by the NHDOT or similar contracting agencies.
3. Local market area firm characteristics: The NHDOT is always in search of new transportation related potential DBE firms with characteristics that would benefit the transportation field and increase the offerings of DBE related firms. At this time, there is no evidence that an adjustment of this type is necessary.
4. Other relevant data: There has been no other data that suggests additional Step Two adjustments are warranted. There have not been and are no impending decertification's of DBE firms responsible for the overwhelming majority of past

participation. The State of New Hampshire Office of Attorney General has no record of suits involving discrimination of minority or women owned businesses. Current DBEs have not expressed any concern with the availability of work and awarding of subcontracts.

BREAKOUT OF ESTIMATED RACE AND GENDER-NEUTRAL AND RACE AND GENDER-CONSCIOUS PARTICIPATION

The NHDOT has established an overall goal of 7.74%; the NHDOT intends to attain 7.74% of this goal through race and gender -neutral participation and 0% through race and gender-conscious measures.

NHDOT will meet the maximum feasible portion of the overall goal by using race and gender-neutral means of facilitating DBE participation. The NHDOT has consistently met its DBE goal by implementing primarily race and gender-neutral contract goals.

The NHDOT continues to work with prime contractors to assist their efforts to facilitate race and gender-neutral DBE participation. Race and gender-neutral participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE contract goal, or even if there is a DBE contract goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g. a prime contractor that uses a strict low bid system to award subcontracts).

Race and gender-neutral means include, but are not limited to, the following:

1. Carrying out information and communication programs on contracting procedures and specific contract opportunities, such as ensuring the inclusion of DBEs, and other small businesses, on mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors;
2. Providing a copy of the Invitation For Bids, when requested to NHDOT-certified DBE's for each bid letting;
3. Providing introductions to help DBEs, and other small businesses with access to prime contractors in an effort to develop working relationships
4. Ensuring distribution of NHDOT's DBE Directory, through print and electronic means, to potential prime contractors and subcontractors;
5. Providing technical assistance and other services;
6. The Office of Federal Compliance works with prime contractors (by phone, e-mail, and in person) that take out sample proposals for upcoming NHDOT projects, to search for DBEs capable of subcontracting on the project. We identify potential items

of work with subcontracting opportunities and contact DBEs capable of performing this work and encourage them to submit a bid to the prime. In this manner, our office is able to proactively incorporate DBEs into the initial proposal stage for the project.

Each time NHDOT submits its overall goal for review and approval by the US DOT, NHDOT will also submit the portion of the overall goal that is expected to be attained through race and gender-conscious means and the basis for that position.

The NHDOT assesses the percent of DBE participation on a quarterly basis. If it is determined that any time during the FY of the DBE program, the 7.74 % overall goal will not be achieved, NHDOT may use contract goals as a race and gender-conscious means of meeting any portion of the overall goal not achieved by use of race and gender-neutral means.

The NHDOT may elect to place specific contract goals on selected large-scale projects, if failure of the selected projects to attain the overall statewide DBE goal would have a disproportionate weight and affect the state's ability to meet its overall race and gender-neutral DBE goal.

The following provisions apply to the use of race-conscious contract goals:

1. NHDOT will use contract goals only on those federally assisted projects that have subcontracting possibilities.
2. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by NH DOT's overall goal, NHDOT will set contract goals so that they will cumulatively result in meeting any portion of NH DOT's overall goal not obtainable through the use of race and gender-neutral means.
3. Contract goals will provide for participation by all certified DBEs and not be subdivided into group-specific contract goals.

To ensure that NHDOT's DBE Program continues to be narrowly tailored to overcome the effects of discrimination, use of contract goals will be adjusted as follows:

1. If NHDOT concludes that it can meet its overall goal through race and gender-neutral means, contracting goals will not be used.
2. If, during the course of any year in which NHDOT uses contract goals, NH DOT determines that the overall goal will be exceeded, NHDOT will reduce or eliminate the use of contract goals to the extent necessary to ensure that the overall use of contract goals does not result in exceeding the overall goal.

To ensure that prime contractors demonstrate good faith efforts necessary to fulfill contract goals (race and gender-conscious measures) assigned to Federally-assisted projects, they will be required to incorporate the following measures pursuant to the bidding process:

1. Offering Assistance. The prime contractor may offer assistance to DBEs and small businesses in the areas of interpreting plans, preparing proposals, providing advice to obtain bonding and insurance, etc. Any assistance requested or provided shall be documented.
2. Discussions with Small Businesses. The prime contractor shall respond to all requests from DBEs and small businesses that are submitting quotes including, but not limited to: quantities, expected overtime, project scheduling, pit information, method of measurement, payment schedule, items of work included in the quote.
3. Accepting and Evaluating All Bids Offered. Prime contractors, DBEs and small businesses shall accept and evaluate all bids offered, regardless of work elements intended to be subcontracted. DBEs and small businesses should not be limited to smaller subcontracts because a larger amount of work is intended to be subcontracted to a larger business.
4. Specific DBE Goal Reporting Requirements. For race and gender-conscious projects with a specific DBE goal, the prime contractor submitting the apparent low bid must submit a DBE Commitment Form within three (3) business days of bid award. The DBE Commitment Form must indicate the total dollar value of DBE commitments. This form is provided by the Office of Federal Compliance and includes the following; name and address of the each DBE to be used, items numbers and descriptions of the work to be completed by each DBE, the estimated dollar value of each participating DBE and the total DBE commitment in dollars and expressed as a percentage of the total contract. Additionally, the prime contractor must submit a Letter of Intent for each DBE listed on the DBE Commitment form. The letter of intent confirms the information submitted on the DBE commitment form and is signed by both the prime contractor and each DBE firm.

Public Participation

The NHDOT provided for public participation in several ways:

1. The NHDOT published a notice of the proposed DBE goal in the New Hampshire Sunday News, the only statewide newspaper on June 19, 2011. (Please see attachment) This notice should have been published on or prior to Friday June 17, 2011, to allow for the full 45-day period for submission of comments, however, the decision was made to publish this notice in the Sunday newspaper and take advantage of the higher sales and circulation of the Sunday newspaper to maximize exposure of the public notice. The potential impact from a 43-day comment period vs. the required 45-day period for submission of a public comment was, in the Department's

estimation, outweighed by the much greater visibility attained in the Sunday newspaper. No comments were received as a result of this public notice.

2. The published public notice offered a thirty-day period to examine and evaluate NHDOT's DBE goal setting methodology by visiting NHDOT headquarters (address, business hours and contacts were provided). This period began the day of publication and continued for 30 days. No requests to examine the goal document were received.
3. The public notice announced that a public meeting was scheduled on June 27, 2011, from 10:00am until noon, to review and discuss the DBE goal setting methodology with any interested individuals or groups. The public meeting was held at the designated time and place and resulted in no interested individuals or groups attending for discussions.

Further input was solicited by providing the proposed DBE goal and methodology to the following groups and associations, with a request to engage in face-to-face discussions regarding the proposed goal at a time and date of their choosing. The proposed goal, methodology and request for a face-to-face meeting were sent to the following organizations:

- NH Association of General Contractors
- NH Small Business Administration
- NH Chapter of NAACP in Portsmouth, Manchester and Nashua
- NH Chapter of the National Association of Women in Construction
- Compliance USA, Inc.

None of these organizations or their representatives accepted the offer of a face-to-face meeting to discuss the proposed DBE goal.

Goal Monitoring

The NH DOT will continue to monitor DBE participation by requesting quarterly reports of payments made from prime and subcontractors to DBEs to gauge participation on active federally assisted projects. If the rate of participation indicates that the NH DOT will not attain or exceed its race and gender-neutral DBE goal at any time during the 3-year cycle, the NH DOT will increase proactive efforts to increase DBE participation. If additional efforts at DBE involvement are unsuccessful, the NH DOT may implement specific project goals as a race and gender-conscious measure to reach its overall statewide goal. NH DOT will continue to monitor attainment of the overall goal and the contract goals to determine whether the intent of project goals has been met and will make a determination whether the project goals need to be continued. In any year in which NH DOT meets part of the goal through race and gender-neutral means and the remainder through contract goals, NH DOT will maintain data separately on DBE payments in those contracts with and without contract goals, respectively. NH DOT will report this data to DOT as provided in 49 CFR § 26.11.